




## *Report to the Auburn City Council*

Action Item  
4  
Agenda Item No.

City Manager's Approval  
3/2

**To:** Mayor and City Council Members  
**From:** Bernie Schroeder, Public Works Director   
Michael G. Colantuono, City Attorney  
**Date:** September 12, 2011  
**Subject:** College Heights Extension Accepting Dedications of Right of Way

### *The Issue*

Shall the City Council act by resolution to formally accept title to three streets and one alley offered to the City in the early 1900s on the face of the map creating the College Heights Extension subdivision?

### *Recommendation*

Staff recommends that the City Council act by resolution to formally accept the offer of dedication on the fact of the map and to direct the City Manager to record that resolution.

### *Fiscal Implications*

The resources to prepare this resolution and staff report and to record the resolution are budgeted. As the alley is already a City right-of-way and has been for decades, formally acknowledging that fact has no implications for the City's roadway maintenance costs.

### *Alternatives*

The options available to the City Council are:

1. Take no action and rely on the City's prescriptive title (i.e., title obtained over time by City and public use of the alley) to the public right of way.
2. Adopt the resolution and obtain formal title to the public right of way.

### *Discussion*

A dedication is the transfer of an interest in real property to a public entity for the public's use. Even though the City appears to have rejected the offer to dedicate the alley in 1912, for offers of dedication made prior to 1980 the City may rescind such a rejection and subsequently

accept the offer of dedication by either Council action or other conduct – i.e., City and public use of the right-of-way.

The City's and the public's use of the alley and streets constituted an effective acceptance of the dedication. As a general rule, when public authorities expend public funds for improvement or maintenance of an area offered for dedication, there is sufficient evidence of the public's acceptance of the offer to dedicate the property. The construction and maintenance of a sewer line under the alley was an acceptance of the offer to dedicate the alley and streets for public use. Furthermore, the City has placed "Fire Lane" signs in the alley and provides police and fire services to the adjoining properties and authorizes its franchised trash hauler to provide trash service in the alley.

The question of whether to adopt the resolution is, of course, a matter of policy for the Council to consider and decide on a course of action.

### **Conclusion**

We recommend that the Council adopt the proposed resolution and direct the City Manager to record it. If we can provide further information, please let us know.

Attachment: Draft Resolution No. XX-XX Accepting Dedication of Rights of Way

1 RESOLUTION NO. 11-

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN  
3 ACCEPTING DEDICATION OF RIGHTS OF WAY  
4 -----

5 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:  
6

7 WHEREAS, an offer to the City for dedication for public use of three  
8 public streets and one alley as shown in the College Heights Extension  
9 filed in Book C of Subdivisions at page 63 ("the Rights of Way") was  
10 made and rejected on the face of the College Heights Extension Map in  
11 1912; and  
12

13 WHEREAS, Government Code Section 66477.2(a) provides that the offer  
14 of dedication may be accepted at any time by resolution, notwithstanding  
15 a prior rejection; and  
16

17 WHEREAS, the City's rejection of the offer of dedication in 1912 did not  
18 terminate the City's power of acceptance; and  
19

20 WHEREAS, as to offers of dedication made prior to 1980 the City may  
21 rescind such a rejection and accept the offer of dedication either by  
22 Council action or by other conduct (Wright v. City of Morro Bay, (2006)  
23 144 Cal.App.4th 767; San Francisco Sulphur Co. v. Contra Costa County,  
24 (1929) 207 Cal.1, 5-6); and  
25

26 WHEREAS, public use alone, without any formal action by the City,  
27 constituted acceptance of the offer of dedication (Hays v. Vanek, (1989)  
28 217 Cal.App.3d 271, 283); and

1 WHEREAS, repair, maintenance, and other expenditures of public funds  
2 for improvements of an area offered for dedication constitute acceptance  
3 of an offer of dedication under common law (see Yuba City v.  
4 Consolidated Mausoleum Syndicate, (1929) 207 Cal. 587, 589, 590;  
5 Union Transp. Co. v. Sacramento County, (1954) 42 Cal.2d 235, 240,  
6 241); and

7  
8 WHEREAS, after 1972 the use of City funds for maintenance,  
9 improvements or cleaning constituted acceptance of the offer to dedicate  
10 the rights of way under Civil Code section 1009, subds. (b), (d); and

11  
12 WHEREAS, the presumption created by Code of Civil Procedure section  
13 771.010, that an offer of dedication not accepted within 25 years is  
14 rejected, does not apply retroactively (Wright v. City of Morro Bay,  
15 (2006) 144 Cal. App. 4th 767, 771); and

16  
17 WHEREAS, the City has installed and maintained a sewer line under the  
18 alley and one of the three streets included in the Rights of Way since at  
19 least 1972; and

20  
21 WHEREAS, for many years the City has used the alley included in the  
22 Rights of Way ("the alley") to provide trash removal, fire and police  
23 services to the properties adjoining it; and

24  
25 WHEREAS, the City has installed public parking signs in the alley at the  
26 request of adjacent property owners to control parking by the general  
27 public, especially those attending events at the nearby County  
28 Fairgrounds, further evidencing general public use of the alley;

1 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN DOES  
2 HEREBY RESOLVE AS FOLLOWS:

3  
4 SECTION 1: The foregoing recitals are each true and correct.

5  
6 SECTION 2: The City Manager is directed to record a certified  
7 copy of this Resolution in the office of the County Recorder to confirm the  
8 City's acceptance of the offer of dedication of the Rights of Way and to  
9 give notice of that fact.

10  
11 PASSED, APPROVED AND ADOPTED this 12th of September 2011.

12  
13  
14 \_\_\_\_\_  
William W. Kirby, M.D., Mayor

15 ATTEST:

16  
17 \_\_\_\_\_  
18 Joseph G. R. Labrie, City Clerk

19  
20 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby  
21 certify that the foregoing resolution was duly passed at the regular  
22 meeting of the City Council of the City of Auburn held on the 12th day of  
23 September 2011 by the following vote on roll call:

24 Ayes:

25 Noes:

26 Absent:

27  
28 \_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

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